IN THE

Supreme Court of the United States

JUL 2 19
MICHAEL RODAK, JR

October Term 1974

No. 73-1970

DAVID CAMPBELL DEBLASIS,

Petitioner,

vs.

COUNTY OF SAN BERNARDINO, *et al.*

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

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COUNTY OF SAN BERNARDINO, *et al.*

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

History of the Case.

This case involves an action for the false arrest of Petitioner, a juvenile. Petitioner was arrested under Sec. 148 of the Penal Code of the State of California, the relevant part of which reads:

> Every person who willfully resists, delays, or obstructs any public officer in the discharge, or attempt to discharge any duty of his office . . . is punishable by a fine . . . or by imprisonment . . . or by both.

The arrest was made on October 4, 1968. The case was tried before a jury on May 24, 1972. Nine members of the jury found for the Respondents, the foreman and two jurors finding for Petitioner.

Petitioner appealed to the District Court of Appeal, State of California, Division two. The judgment of the lower court was affirmed February 13, 1974. Petition for rehearing was denied April 15, 1974.

The Supreme Court of the State of California denied a hearing on April 10, 1974.

The Supreme Court of the State of California denied a hearing on April 10, 1974.

The decision of the Court of Appeal and the denial by the State Supreme Court appear in the Appendix, hereto marked A and B and C.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3) and the First, Fourth, and Fourteenth Amendments to the United States Constitution which guarantee to each citizen the Right of Free Speech, protection against False Arrest, and the right of Due Process of Law.

Question Presented.

The question raised in this Petition is whether Petitioner was denied due process by the denial by the Courts of California of damages to him for false arrest by law enforcement officers of the State.

Statement of Facts.

Petitioner and a friend, late from England, were leaving a village high school footba!' game at half time. As they left the field and stood OUTSIDE the gate, they saw a black boy being arrested. The black boy was violently resisting arrest, and it took three deputy sheriffs to subdue him and carry him to the patrol wagon. There is no testimony by either Respondent or by any witness that Petitioner said a word or did anything to interfere with the arrest. The testimony shows conclusively he was only a silent by-stander.

After the black boy had been carried to the patrol car, Respondent Snyder ordered Petitioner to move. Snyder testified that he ordered Petitioner to move in a loud voice twice within fifteen seconds. [Tr. p. 208.] Witness for Respondents, Deputy Sheriff Perkins testified that at this point Petitioner "began back peddling." [Tr. p. 310.] Petitioner, shocked and surprised, replied, "I am not doing anything illegal. Ask me politely and I will leave." [Tr. p. 18.]

At this point Respondent Snyder ordered Petitioner arrested. He testified, "I knew then I had a smart aleck." [Tr. p. 211.] When asked why he did not speak politely, Respondent testified, "We were taught in police academy not to speak politely under such circumstances." [Tr. p. 210.] Petitioner asked for Respondent's badge number. Respondent Snyder testified he refused to give Petitioner his badge number. [Tr. p. 238.] Petitioner was told, "You will get plenty of badge numbers where you are going."

Petitioner was arrested and taken to the patrol car where he was "patted down". Nothing incriminating was found in his possession, only a pipe, tobacco pouch, and his wallet.

Petitioner was placed in the patrol car with the black boy. Respondent Carlos, the arresting officer, testified that on the way to the sheriff's station, Petitioner advised the black boy to keep silent. [Tr. p. 265.]

At the sheriff's station, Petitioner and the black boy, while still manacled, were ordered to sit on the floor. Petitioner complied, but the black boy refused, whereupon witness Deputy Telles, testifying for Respondents, said, "I just took him by the arm and kicked his feet and lowered him to the floor." [Tr. p. 126.] At this

point a strange thing happened. The black boy, who had violently resisted arrest and used vile language against the officers and refused to obey the command to sit down, was dismissed. No charge was filed against him. A sheriff's car took him home and left him in charge of his grandmother.

Petitioner was placed in a cell and kept incommunicado until the news of his arrest reached his family a mile away. Respondent Carlos testified that Petitioner was never placed in a cell but was sent home in fifteen minutes. [Tr. p. 266.] But the official record shows that Petitioner was kept at the station for nearly two hours. Asked to draw a diagram of the cell, Petitioner drew an accurate map of the cell and its furnishings. He was asked by attorney for Respondents if it was not possible to see the inside of the cell through a window. Was the jury to believe that this Petitioner, shocked and frightened, stood outside the cell and drew a sketch of the cell through the window?

Finally Petitioner was booked, photographed, fingerprinted and released to his uncle on the payment of bail in the sum of $315.

The arrest took place on Friday night. On Monday morning the village paper carried the story of the arrest on the front page. It stated that Petitioner had been involved in a near race riot. Immediately after the paper reached the street, the case was dismissed.

The prosecutor in the criminal matter was of course correct in refusing to prosecute Petitioner for violation of Penal Code 148, because under no circumstances could it be remotely held that he had obstructed the officer in the performance of his duty.

Inconsistent and Conflicting Testimony Given by Respondents and Their Witnesses.

The Respondents testified that Petitioner was in a crowd of students who were ordered back through the gate into the athletic field AFTER the black boy was arrested and placed in the patrol car. There was testimony that Petitioner stood with his arms akimbo and said, "I know my rights. I am doing nothing illegal. Ask me politely, and I will leave." There was no testimony that Petitioner resisted arrest, used any vile language, or did anything to incite the mob to violence.

Respondents and their witnesses testified that Petitioner "co-operated" when he was arrested, used no offensive language, advised the boy to keep silent when he was cursing the officers, sat on the floor when commanded to do so, and waited in a cell until rescued by his uncle. This testimony, given by Respondents and their witnesses, is inconsistent with a belligerent attitude on the part of Petitioner. Petitioner vehemently denied that he stood with arms akimbo. (But what if he did? Is that grounds for arrest?)

Shortly after this suit was filed, attorneys for Petitioner took the deposition of the arresting officer, Deputy Carlos.

Deputy Carlos testified as follows: "Was he (the Petitioner) the only one OUTSIDE the gate?" Answer, "I believe he was." Later, "He was the only one outside the gate." And again, "So the rest of the crowd were inside the gate?" Answer, "They were all back behind." [Tr. p. 279.]

Three years later at the trial, Respondent Carlos, the arresting officer, testified, question, "How many

people were OUTSIDE the gate when you first saw Mr. De Blasis?" Answer, "I would say approximately fifty people." This was a direct contradiction of his former testimony. This number did not satisfy Respondents, so Deputy Perkins, when asked how many people were outside the gate, testified, "Oh, anywhere from seventy-five, a hundred, a hundred and fifty people." Deputy Perkins became sentimental and said he was afraid Petitioner would be injured. [Tr. p. 312.]

This phantom crowd of one hundred persons stood in a space of twenty-five feet. [Tr. p. 276.]

The arresting officer, Deputy Carlos, testified, question, "Did you feel at that particular moment the crowd created any potential danger?" Answer, "I would say no." [Tr. p. 234.]

And Respondent Snyder who ordered the arrest, testified, "All right, he was standing. Was he doing anything in particular other than just standing there?" Answer, "No, he just stood." And later Respondent Snyder testified, "We had no particular problem at that time."

Respondent Snyder who ordered the arrest denied that he knew Petitioner by sight, but he admitted he had skiied more than once on the lake belonging to the family where the Petitioner worked.

Four times in Respondents' brief, filed in the Appellate Court, council argued in defense of this arrest that the deputies were expecting trouble and were apprehensive, but the principal of the high school and the Athletic Director, who was in charge of the field, testified that they heard of no trouble whatsoever although they were both present during the entire eve-

ning. Petitioner was the only one arrested, and the Athletic Director said he did not know of the arrest until he saw it in the paper on Monday. [Tr. pp. 324 and 330.]

Respondent Carlos rode with the patrol car carrying the black boy and Petitioner and then went home. It was at half time. He did not return to the "danger" scene. This is not consistent with the anxiety over the game. [Tr. p. 270.] Not one civilian testified for Respondents. All civilians testified for Petitioner.

Decision of the Appellate Court Not Supported by Any Evidence.

In denying Petitioner's appeal, the Appellate Court stated in its decision, "Substantial evidence supports the proposition that actions of Appellant obstructed the efforts of county peace officers to arrest a struggling, vituperative, inebriated young black man."

This statement contradicts all the testimony given at the trial either by Respondents or the witnesses called to testify for them. There was not a word of testimony supporting this decision. All witnesses and Petitioner agree that the black boy was in the patrol car before Petitioner was ordered to move.

There is no evidence that Petitioner said or did anything to obstruct the arrest of the black boy. All the witnesses agree that Petitioner was a silent by-stander.

There is no law which prohibits a by-stander from witnessing an arrest if he does nothing to obstruct the arrest. The Appellate Court misunderstood the evidence given by all the witnesses in this case.

Importance of Questions Involved.

During the first quarter of this century, laws were passed depriving juveniles of all their constitutional rights—the right to a jury trial, the right to be confronted by the witnesses against them, the right to keep silent when accused. In 1967, in *In re Gault,* 387 U.S. 81, this Court restored these rights to these citizens. It took fifty years to correct this injustice. We sowed the wind. We reaped the whirlwind.

But new problems arise for each generation. Within the last two years under the aegis of Senator Sam Ervin, Jr., Congress passed a law prohibiting the F.B.I. and other agencies from revealing the records of minors who have been arrested but not convicted. It provides that if a minor has been arrested but not convicted, he can swear falsely when he applies for employment. He can swear under oath that he was never arrested. In other words, "We have lied to you. You can lie about us. What could be fairer than that?"

This privilege has questionable moral overtones. Lies beget lies.

The reason given by Senator Ervin for the introduction of this law was the proven fact that hundreds of innocent boys and girls had been falsely arrested. While the law was intended to grant relief, it memorializes the fact that the Government is helpless to protect these victims from false arrest. What have we done to this once precious system of ours to create a climate of such futility?

This is the generation that was born in the shadow of the bomb. Sparked by an unpopular war and energized by experimental drugs, serious disturbances occurred east and west. Campuses were aflame with dis-

sention. Peace officers were hard put to prevent loss of life and property. As a result innocent people were arrested. In this crisis peace officers were entitled to our sympathy and forbearance.

Now that the war is over and the young have been given the right to vote, the scene has changed for the better. The frenzy of the '60s has subsided. These young men and women have learned that violence is not a suitable or safe way to solve national issues. They are growing up. They have gone back to work or to school under the G.I. Bill. But the public will not forget. It will take a generation to allay their fears. The distrust and prejudice carries over.

It is apparent that judges, prosecutors, police officers, and juries assume that under the new law False Arrests result in no damage to the innocent victim. Arresting officers give specious excuses for their acts. "They are used to it," they say. "A day in jail will do them no harm. It may do them good." And they have photographs and fingerprints in case of further trouble. Since the law allows the victim to deny his arrest, they assume that no harm is done.

They lose sight of the traumatic effect on a boy of twenty who has lived all his life in the same village, has never been in trouble before, who is arrested, insulted, sprayed with their venom, and locked in a jail cell. They regard as unimportant the fact that the news of the arrest was published on the front page of the village newspaper. No amount of money could adequately compensate Petitioner for the embarrassment and humiliation he suffered.

It will be a sorry day for the nation if a whole generation comes to regard a false arrest as a trivial

circumstance. It will be tragic if these young victims are compelled to believe that false arrests are no concern of the Courts of Justice. For every arrest there is a notable loss of self-respect and the boy or girl or man or woman, once arrested, is poised on a slippery slope thereafter.

The road to maturity is rough and difficult. It is from the Courts that these young citizens hope for justice. This is especially true of the Supreme Court; it is a citadel above the waves of public opinion. Its members have no fear of revenge or reprisal. They are indifferent to the press.

Petitioner's case is reminiscent of the Winslow Boy whose suit was taken to the House of Lords before he was vindicated.

Authorities.

It would encroach on the Court's time and patience to cite the almost countless decisions protecting citizens against False Arrest under Amendments One, Four and Fourteen of the Constitution.

These decisions extend from the Magna Carta signed by King John in 1215 to the decision of this Court in the case of *Lucas v. Arkansas,* .... U.S. ...., 42 U.S. Law Week 3581, decided April 15, 1974.

In upholding the rights of a citizen under the Fourth Amendment, in the case of *Olmstead v. The United States,* 277 U.S. 438, the Court said, "The right to be let alone. . . . the most comprehensive of rights and the right most valued by civilized man."

In *Thompson v. The City of Louisville.* 362 U.S. 199 (1960), the Court said, "The charges were so totally devoid of evidentiary support as to render his convic-

tion unconstitutional under the due process clause of the Constitution."

In the case of *Bustyn v. Wilson*, 343 U.S. 495, Mr. Justice Breed said, "Our duty requires us to examine the facts . . . in each case to determine whether the principles of the First Amendment have been honored."

In the recent case of *Lewis v. The City of New Orleans*, 415 U.S. ...., 39 L. Ed. 2d 214, this Court said, "A properly trained officer could reasonably be expected to exercise a higher degree of restraint than an average citizen." The trouble in this case arose because Petitioner said, "I am not doing anything illegal. Ask me politely and I will leave." At which the Respondent Snyder testified, "I knew then I had a smart aleck," and that he had been taught in Police Academy, "Not to speak politely under such circumstances."

Conclusion.

For the reasons set forth above, the petition should be granted.

Respectfully submitted,

LITTA BELLE CAMPBELL,
Attorney for Petitioner.

Of Counsel:
HILL, FARRER & BURRILL,
By WILLIAM M. BITTING,
JOHN A. DELATORE.

APPENDIX A.

Opinion of the Court of Appeal.

Court of Appeal, Fourth District, Second Division, State of California.

David Campbell DeBlasis, Plaintiff and Appellant, vs. County of San Bernardino, et al., Defendants and Respondents. 4 Civil 13134, (Sup.Ct. No. 149640).

Filed: Feb. 13, 1974.

APPEAL from the Superior Court of San Bernardino County. Thomas M. Haldorsen, Judge. Affirmed.

Litta Belle Campbell, William M. Bitting, Hill, Farrer & Burrill, and John A. Delatore for Plaintiff and Appellant.

Stockdale, Peckham, Estes & Bruggerman, and George Bruggeman, Jr. for Defendants and Respondents.

David Campbell DeBlasis, plaintiff below, appeals from an adverse judgment, by jury verdict, in his action against the County of San Bernardino (and several peace officers) for alleged false arrest and false imprisonment. He charges that the jury's verdict is unsupported by substantial evidence.

As viewed most favorably to the respondent (*Crawford v. Southern Pacific Co.*, 3 Cal.2d 427, 429), the facts are as follows: Appellant DeBlasis, a non-student, was attending a football game at Victor Valley High School on October 4, 1968. He wished to see his cousin play, and also to explain the rudiments of football to Michael Lowe, an English immigrant.

Appellant was arrested when, about an hour and one half into the game, he and Michael Lowe were leav-

ing so that they could view a television program scheduled for later that evening. The charge was violation of Penal Code section 148, which reads:

> "Ever person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine . . ., or by imprisonment . . ., or by both. . . ."

Substantial evidence supports the proposition that actions of appellant DeBlasis obstructed the efforts of county peace officers to arrest a struggling, vituperative, inebriated young black man, a Mr. Hamilton. The setting for appellant's obstructive actions was an area outside of and separated by a fence from the football stadium. It was in this area, while *several* peace officers were attempting to subdue Mr. Hamilton, that an unfriendly, verbally abusive Crowd (of possibly 100 persons) gathered. Appellant DeBlasis was a member of this crowd.

The crowd "surged" toward the area of the officers' vehicle prior to the time Mr. Hamilton was completely secured in that vehicle. Realizing that trouble would likely ensue if the hostile crowd were permitted to gather around their patrol vehicle, officers ordered everyone not involved in the arrest to clear the area. The members of the crowd obeyed these orders, with the exception of appellant DeBlasis, who assumed a defiant, hands-on-hips posture.

Officers then directed orders specifically to DeBlasis. Two successive orders to move back (from the arrest scene) resulted only in a discussion, initiated by appellant, wherein he asserted: "I know my legal rights.

This is a public school. I can stand anywhere I want to." Thereafter, DeBlasis was warned again to either obey the order to move back or to face arrest. All the while this was occurring, the crowd delivered a din of catcalls at the officers.

Appellant DeBlasis was soon thereafter placed under arrest. He offered no resistance.

The above-described situation appears clearly to constitute obstruction of the arrest of Mr. Hamilton. Appellant's act of defying the officers' reasonable orders to back away from the arrest area presented a real threat to the officers' safety and to their attempt to remove Mr. Hamilton from the stadium area. Moreover, since the record indicates the atmosphere at the game was "tense" and since there had been fights earlier in the evening, the officers could legitimately have concluded that appellant's intransigence, if unchallenged, might have catalyzed an already hostile crowd into a difficult-to-control mob.

The judgment is affirmed.

Gabbert, *J.*

We concur:

Kerrigan, *Acting P. J.*

Tamura, *J.*

APPENDIX B.

Court of Appeal, State of California, Fourth Appellate District, Division Two.

David Campbell DeBlasis, Appellant vs. County of San Bernardino, et al., Respondent. 4 Civ. No. 13134, County No. 149640.

Filed: March 7, 1974.

BY THE COURT:

The petition for rehearing is DENIED.

Kerrigan, *J. Acting P. J.*

Copies to County Clerk, County of San Bernardino, Courthouse, 92401; Litta Belle Campbell, P.O. Box 790, Victorville 92392; John A. Delatore, 14250-7th St., Ste. 200, Victorville, 92392; William M. Bitting, 445 S. Figueroa St., 34th Dlr., L.A., 90010; Bruggeman and Smith, 505 N. Arrowhead Ave., San Bernardino, 92401.

APPENDIX C.

Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 94102.

April 10, 1974.

I have this day filed Order Hearing Denied.

In re: 4 Civ. No. 13134 De Blasis *vs.* County of San Bernardino, et al.

Respectfully,

G. E. Bishel

Clerk